

SPECIAL COMMITTEE ON RIVERFRONT ACTIVITIES AND BASEBALL

August 25, 2004

Chairman Lopez called the meeting to order.

The Clerk called the roll.

Present: Aldermen Lopez, Gatsas, Guinta, DeVries, Smith

Messrs.: K. Clougherty, T. Clark, W. McCabe, R. Sherman, S. Hamilton,
E. Chinburg

Report from staff regarding the Development Agreement, if available.

Kevin Clougherty, Finance Director, stated as everyone knows we have been talking for several months about the difference between the Master Lease Agreement that we have and the construction of a deed based arrangement with the team. Once the decision was made by the arbitrators in terms of price we have been meeting with the development team and trying to come to an understanding of what the deed business deal would look like and we are here to report that to you tonight. We have had, since the time of the release of the figure for the sale of the land, several meetings with the developers and City staff. I would like to thank City staff. We have had the Building Department, the Planning Department, Solicitor's Office, Highway Department and Assessors and I am sure I am leaving somebody out but they have all been involved in long and tedious meetings working out the details of what we are going to talk about tonight. I appreciate all of the work that all of those departments have contributed. We have been meeting with the Roedels, with Chinburg Associates and that firm and with the team represented by Andrew Batchelder and the construction people like Bob Brooks, as well as with Frank Catapano to try to come to some conclusion on how to move the project forward. What we are going to propose tonight, Alderman, is we have a few pages to handout. The exercise we went through was to start with a series of items that really listed what was in the original lease and use that as a basis to go forward in arguing what the different positions should be on those various items that were in the lease and converting that over to a deed position. What I would like to do is handout for you tonight a summary of these. For some people it may be too much detail and for others it may not be enough but I think it is a good

midpoint. What we would suggest is that we hand these out and give the Committee a chance to read it for 15 minutes or so and then what we will do is go through and explain each one of the items and answer any questions if that is okay with you.

Chairman Lopez asked have all parties signed off on this.

Mr. Clougherty answered all parties have signed off on this, both on the City side and on the development side. This is a recommendation from the staff and the developers as a proposal to move this project forward and to have them acquire the land.

Alderman Gatsas asked is there a purchase and sales agreement, Kevin.

Thomas Clark, Solicitor, answered no there will be no purchase and sales agreement. There will be a deed.

Chairman Lopez called for a 15-minute recess.

Chairman Lopez called the meeting back to order.

Solicitor Clark stated as Kevin Clougherty had pointed out before the parties have been negotiating in earnest for several meetings and spent many hours at this. They have come up with a purchase proposal that spells out the business deal. All parties have signed off on it and agreed to the terms within it and I would like to turn this over to Walter McCabe to run through the business deal as presented to the Aldermen tonight.

Walter McCabe stated the outline of the Riverfront Purchase Proposal reflects discussions between the development groups and the City with regard to how the development would be implemented and how the purchase would close in connection with the sale of the land surrounding the baseball stadium. It includes discussions to finalize, which was one of the items that a good deal of time was spent on, the allocation of how the costs of putting in place the roadway infrastructure that is needed for the subdivision of the parcels in the development to work would be handled amongst various developers, i.e. the stadium developer and the developers of the other components of the property out there. Probably the simplest way to proceed if you would like is for me to go through paragraph by paragraph stopping after each one to confirm what that paragraph says and how it might deviate somewhat from what was initially contemplated by the Master Lease before the purchase process moved forward. I note that the outlined Purchase Proposal has been ultimately approved here by all of the development parties. They have so indicated on the document. There are final documents that

would be put together to implement this proposal. There are drafts of them in rough shape in my office. Assuming that this was approved, those would immediately be circulated and finalized among the parties. The Purchase Proposal indicates that that step is supposed to happen in the introductory paragraph. Paragraph 1 – one of the items that the developers had requested and seemed reasonable to the City was that the City proceed to transfer the property in pieces rather than in mass. They have already proceeded to get a subdivision approved subject to some conditions. The main one of which was figuring how the roadway costs would be covered that have been discussed and resolved among the development parties. Transferring it in three pieces allows each of the developers who have somewhat separate interests in the three parcels to proceed to purchase the parcel that is of interest to them. There is a savings in the conveyance task that would otherwise have to be paid if there are two steps in the transfer and was a reasonable accommodation the City thought as this arrangement was negotiated between the City and the development parties. The arrangement is that they would still all close at the same time and there was an allocation of the arbitration determined purchase price between the three parcels based really on an allocation suggested by the developers but not necessarily considered to be significantly out of line with the relative valuation that one might put between the three parcels in the event with the concept that they were closing together. Any questions on the first paragraph?

Alderman Gatsas asked can you tell me how much this deviates from the original lease agreement.

Mr. McCabe answered the original lease agreement contemplated a single transfer if they elected to purchase all of the property to MDV, meaning Manchester Downtown Visions or its nominee. So it is a change from a single deed to one party to three deeds, but all closing at the same time.

Alderman Gatsas asked what is the advantage to the City for doing this.

Mr. McCabe answered the advantage to the City is accommodating the developers in something that would help them and save them a little bit of conveyance tax. There is no cost to the City of splitting it into three deeds.

Alderman Gatsas responded so basically what you are saying is it is a cost savings to the developer. Can you tell me how much that cost savings would be?

Mr. McCabe replied the tax rate I believe is \$15 per \$1,000, which is typically split between the buyer and seller. The City would not owe that on its transfer out but the recipients would owe that, meaning the buyers would owe ½ of that. There would have to be two transfers presumably of at least part of the property if you

were to do a single deed to the master developer who then turned around and deeded two portions of it to the other developers thereafter. There would be a little bit of taxes saved.

Alderman Gatsas asked can you give me an idea of what that is or maybe the Finance Department can tell me how much that savings is.

Mr. McCabe answered ballpark appears to be somewhere around \$20,000.

Alderman Gatsas replied well if I use \$1.4 million divided by \$1,000 multiplied by \$15 it is about \$21,000 and if I double that because there is a double transfer it is somewhere around \$41,000.

Mr. McCabe responded you wouldn't double it because the first transfer they still have the transfer tax on their side of the equation owed. It is the second transfer. You don't save on all of it because some of it was...

Alderman Gatsas interjected so it is about a \$21,000 savings.

Mr. McCabe responded yes that is correct.

Alderman Gatsas asked are there any other changes that are beneficial to somebody – the City versus the developer or the developer versus the City.

Mr. McCabe asked in terms of Paragraph 1.

Alderman Gatsas answered correct.

Mr. McCabe responded other than convenience in allowing them to move forward with the development no. That is sort of the main reason for taking that step. In terms of Paragraph 2, one of the things that was discussed between the developers and the City was their need to have some certainty and begin to move forward with the project. Part of it is the onset of winter that is coming, in particular, with respect to the hotel development. One of the things that they indicated in order to try and meet their planning schedule is that they would like to get this wrapped up effectively by the end of the month and one of the things that we have been working very hard with them on is to try and bring this to closure so it could be brought to this Committee and ultimately to the Board based on a recommendation if this Committee approves what is here and an immediate and rapid closing of the transaction so they would be able to proceed forward with the development, which allows ultimately the tax revenues to be assessed against the property and them to have some operating activity, etc. In other words to bring the process to a close and rapidly move forward.

Alderman Gatsas asked are you aware that we just got this document at 5:15 PM.

Mr. McCabe answered if you say so. I got here after 5:15 PM. I don't know when you received it.

Mr. Clougherty stated that is right, Alderman. We were preparing it and had parties sign off on it about 4:30 PM today.

Alderman Gatsas asked would you, as counsel to the Aldermanic Board, suggest that we receive in a contract or changes to a \$27.5 million project some 45 minutes ago would you as our counsel advise us that we should be making these hasty decisions without looking at it.

Mr. McCabe answered I thought the reason I was asked to be here by Kevin was to go through this and answer questions that arose and explain what was in this particular outline.

Chairman Lopez stated one of the requirements when staff contacted me was I said I didn't want to have a meeting unless the principals signed off on the agreement once the agreement was made. About 24 hours ago I called a meeting for this evening for the Committee to hear from Bond Counsel and staff in reference to this agreement and afterwards we can decide what to do with it. With that, could you please proceed Mr. McCabe?

Mr. McCabe responded Paragraph 3 is a bit of a complicated paragraph. Let me see if I can breakdown what is going on and the rationale for it. One of the things that was discussed between the parties in connection with the rapid close and some disagreements between the parties in terms of what rights the City would have after a sale of the property was the sort of need, if we moved on the time schedule, which certainly was more advantageous to some of the developers – basically the hotel developer who is ready to sort of get in the ground and perhaps a little bit more difficult for some of the other developers was whether some of the impacts of that cost and the cost is for the residential piece that they won't be moving as fast and will certainly be incurring in the formula that is set forth in the proposal here and would be the case under the sort of Master Lease concept obligations to make up effectively debt service that is not being covered from tax revenue in 2005 whether there was any way the City could be somewhat accommodating to help bridge the gap that they were being pushed here in ways that they didn't think they were necessarily legally bound to. I can certainly get into all of the back and forth but the end result is the parties wanted to work to see if an accommodation could be reached and one of the proposals was that the City give the residential developer, Eric Chinburg and his company, a bit of time to come up with the

financing that he would need to pay off fully the City for what is the purchase price that has been set against the residential parcel. We wanted to incentivize, if we were going to offer that financing, effectively purchase money financing for a short term to Eric that 1) we get the bulk of it in fairly rapidly and 2) that there be an incentive to get the balance to the City fairly quickly so that if it didn't occur we would still have a short trigger but we would also have an interest accrual on it that would mean that the City would have a position here that allowed it to recover the money it was expecting plus interest for having effectively floated and waited for its debt. That is the concept behind what is here. What is proposed is that Chinburg would have 60 days at which time he would have taken title to the property, be responsible for it, have given the mortgage back to the City to pay 70% of the purchase price. He would have up to an additional year to pay the remaining 30%, which roughly is \$700,000 to \$300,000 in round numbers and if he paid the \$300,000 within six months he would then be done and if he didn't there would be interest that would accrue from Day 1 until he paid it at the end of the first year.

Alderman Guinta asked Walter explain to me again...you talked a little bit about the need for this and you talked about some delays...

Mr. McCabe interjected there were really two factors that led to this discussion. There was an attempt to see if the City could offer something to help bridge the gap. One of the things that has occurred is that there has been a delay from where people would have liked to have been on this project. The City had a commitment because of having issued the debt that it needed to have income to cover the debt service obligations on the debt. That clock has been ticking since the debt was issued, I guess, in November of last year. However, the tax revenues would be based on the land getting developed. Once it is developed then you would have the tax revenue to support the debt service. That has been the concept throughout the big picture for this particular project. To the extent the development was not able to go forward and was delayed, and there clearly was a delay in the process of coming to terms on what the purchase price would be and some other back and forth in terms of various issues between the parties, the developers weren't in the ground building something. Nonetheless on the City side we are still looking to hold them to pay in lieu of for the real estate taxes that weren't there to cover the debt service obligation. That is one of the things that Chinburg suggested would be helpful and we talked about and really the Finance Department came up with some concepts on some terms where he would be able to pay those funds as they came due in terms of the real estate taxes aren't there but a make whole provided we gave him some terms in terms of financing up front effectively giving him a little bit of float which helped in terms of the way the cost of money works. He doesn't have to put the money out there but he would have it at the other end to cover some of that gap so-called.

Alderman Guinta stated I just want to make sure I understand this. Some of the delay that caused the development to start at a later date is essentially the reason why we require Paragraph 3. Is that fair to say?

Mr. McCabe responded it is a result of the suggested agreement between the developers and City staff working on this, which is a way to give some relief so that they could feel that they could make the payments we would like them to make to cover what isn't there for development.

Alderman Guinta replied let me ask it again. We are delayed. We have been delayed and it is probably fair to say that some of the delays are on the fault of the City. Is that a fair statement?

Mr. McCabe responded certainly the developers have asserted as such and clearly this has been a complicated and difficult process and one could claim that.

Chairman Lopez stated when you say delay by the City, Alderman, I don't believe that is the case. The City has always been prepared to move forward at a moment's notice as we are here tonight. Kevin, I think you can add to this.

Alderman Guinta asked may I finish my question, Mr. Chairman.

Chairman Lopez answered yes but I would like to have Kevin jump in here.

Mr. Clougherty stated I see this as...the reason we were trying to bridge some understanding on this issue is at the same time that we are trying to focus on getting this project moving forward there are some outlays that need to be done in the short-term in terms of road construction and other items. Willingness to provide some agreement on this allows the developer to be a little more contributory with respect to the construction of the road issue and we thought that was an important item as well. So we were able to use this position to help to try and move forward on some of the other items that we were negotiating in terms of getting the hotel construction done and trying to parcel out different pieces.

Alderman Guinta stated since this is the way we are going to go on this particular paragraph, let me ask a couple of quick questions. I am only going to talk about two delays. Let's talk about the purchase price and we will talk about the road issue. The purchase price...one of the concerns that this Committee had and that I had and I voiced it to the Solicitor and the City staff is moving the process forward as fast as we possibly could. Did we do that or did we not do it? Did we wait until the last day of certain timelines to move that process along? I guess my

question is are we paying right now for mistakes that we made in this paragraph. That is what I want to know.

Mr. Clougherty responded as Walter said there is discussion on both sides of delays. What we tried to do in this document is say okay today regardless of the reasons for why we find ourselves in this situation how are we going to move this project today forward? How are we going to concentrate on getting the project to meet the deadlines we are talking about in Item 2 so that this project can get in the ground and we can start to see some benefits on it rather than just talking about it all the time?

Alderman Guinta replied I understand that we need to make changes and amendments to move this process forward. I will speak for myself. I would like to move the process forward and I would like to see this project completed but before I vote on this document I do want to talk about some of the delays that we have experienced because we haven't had a Committee meeting in quite some time to talk about any of these things. I think it is fair for us to have a little latitude in discussing these points especially because this is the first time we are seeing this document. If something...if there is a reason on the City side in terms of delays that requires us to do this...to add this cost to the City I would like to know about it. I guess my first question is what is the cost to the City?

Mr. Clougherty responded certainly Alderman the word requirement is not the right word. What we are trying to do here is move the project forward by working together with the developer. In terms of what the cost would, it would be the difference between having the \$300,000 in the bank for six months, which is...we could go back and calculate that.

Alderman Guinta asked that is the only cost to the City.

Mr. Clougherty answered if we got the money all up front as opposed to the \$1.1 million yes you would have \$300,000 six months sooner. If you go out beyond that there are penalties and that 6% is more than covering your cost for fronting the money. It is a small concession on our part we feel to move the project forward and to give him some flexibility with his financing to be able to construct a better deal and get a more successful project.

Alderman Guinta asked Walter is this standard...is this language standard in deals of this nature.

Mr. McCabe answered to the extent of what is described as purchase money financing is made available, the terms vary dramatically but basically the normal arrangement is the seller makes available some financing and takes back what is

called paper typically secured by the property. Quite often there is a little bit of a leeway as there is here. It says I want to get it sold. I will give you a little bit of time but after that I will start forcing you to give me your money until you start putting interest rates or higher interest rates on. Sometimes it has a feature that says after you have paid the bulk of the money back you can stretch a little more out. As in this case you can put your senior financing on it so you can start building some townhouses, which allows the development to go forward. We certainly don't want to hold that up. You still have security and you have a nice interest rate accruing as it moves forward. It is certainly not out there for 10, 20 or 30 years. It is a one-year maximum. Most of it is in 60 days. It is not an atypical structure when someone is trying to close the gap and incentivize a purchase to be completed.

Alderman Gatsas stated Kevin correct me if I am wrong because I think I have heard this for the duration of this project that we have an agreement. We have an agreement that is the Master Lease Agreement.

Mr. Clougherty responded right.

Alderman Gatsas stated this is a deviation from that Master Lease Agreement.

Mr. Clougherty responded the Master Lease includes in there the provisions for a process that will allow for the sale of the land and we will follow that process.

Alderman Gatsas stated but the only process that is allowed in that Master Lease Agreement is a check to close on the land. These are all deviations from that agreement.

Mr. Clougherty responded are you saying you just want to take a check from them and give them the land with no questions or controls. Is that what you are saying?

Alderman Gatsas replied whatever is in the Master Lease Agreement, those controls would continue with the sale. Either that or somebody needs to give me a side by side as to what is changing in the Master Lease Agreement from what we have before us.

Mr. Clougherty stated that is what we are doing tonight Alderman.

Alderman Gatsas responded but I want to see it in writing.

Mr. Clougherty replied well it is in writing if you will let us get to the rest of the items.

Alderman Gatsas stated you are not showing me what the Master Lease Agreement says and what we are deviating from.

Mr. Clougherty responded you have the Master Lease Agreement and we have given you all of those items. We are going through here item by item.

Alderman Gatsas asked can you give me the page numbers then because I am a little slow at trying to find things.

Mr. Clougherty answered if you want to give us about an hour and adjourn we would be happy to do that.

Alderman Gatsas responded I will give you five days if you need it just so we can see it in a perspective that we can understand. I will go back to the first one and say we had an arbitration process and that arbitration process talked about purchase prices and I think that right now the allocation of purchase prices is somewhat different than what the arbitration process came up with in the breakdown. What was allocated for the hotel, what was allocated for the retail and what was allocated for the condos? Does someone have those appraisals?

Solicitor Clark stated the arbitration decision did not break it out by parcel. It came up with a total figure.

Alderman Gatsas responded it was discussed by parcel.

Solicitor Clark replied there were discussions but there were no separate parcels at that time. The subdivisions weren't complete.

Alderman Gatsas stated so someone has put these arbitrary numbers on here. Who suggested these numbers? Was it the City?

Mr. Clougherty responded again under the terms of the lease it says one number. The agreement is with one party. We are trying to move the project forward. They would like to have it done in three pieces. These are the pieces that were determined by the parties. At the end of the day the City is interested in getting its dollars. How they allocate it amongst themselves is primarily up to them I would think. As Walter said earlier, the allocation they have decided on is not terribly inconsistent with what you would expect for the various parcels that are involved. We would also say that the concept of allowing one of the parties to make an installment payment is not unusual, especially when they have not been able to get their final financing approved and they are in that process. No, I don't see that as a huge deviation from the Master Lease.

Alderman Gatsas asked do you have a copy of the appraisal.

Mr. Clougherty answered I don't. I never had one.

Alderman Gatsas asked Mr. Clark do you have one.

Solicitor Clark answered not with us; no.

Alderman Gatsas asked nowhere in this building.

Solicitor Clark answered probably back in our office.

Alderman Gatsas asked can we get a copy of that while you recess and do a side-by-side comparison.

Mr. Clougherty answered to be honest to go back and have us do a side-by-side, item-by-item is going to take a long time. If you want to go item-by-item and line-by-line it is going to be difficult for two reasons. One, in the lease you have a document. That was approved. You have all of those items. As Walter said earlier this is the business proposal that we are asking you to go forward with. The deed and all of the subsequent documents have not even been finally drafted yet so to take it document by document and walk you through that it will take at least three weeks. That puts you outside of the timetable that we talked about in Item 2.

Alderman Gatsas responded well Kevin if you don't feel that we owe that, as elected officials, to the taxpayers of this City there is something wrong. I believe as an elected official that I owe it to the taxpayers of this City that I understand what is before me and if it takes three more weeks then it takes three more weeks. I didn't stall this. I didn't make this situation come forward so I guess if you want to say that the taxpayers don't deserve that information then you can make that statement but I don't believe that is so. I don't believe my colleagues on this Board believe it is so.

Mr. Clougherty replied I would rather you not put those words in my mouth.

Alderman Gatsas responded I will let you speak for yourself.

Mr. Clougherty stated to be honest Alderman what we are trying to do here tonight is lay out a side-by-side comparison and what the differences are between what the lease arrangement was and what the proposed deed arrangement was. Typically what happens in these projects is the Board makes a policy decision on the business proposals and once those policy decisions are made then it is the

responsibility of the staff and the Solicitor to make sure that those documents are put in a manner consistent with that deal before signature by the Mayor and that is his responsibility as the CEO and that is what we are trying to follow – the typical path tonight and to give you a breakdown item by item. We are not trying as you are seeming to suggest, to sidestep some public knowledge in terms of what this deal is. Given the time here tonight if we can get beyond Item 3 we will go through all of these items and people will understand the difference between the two proposals and we would like to have the opportunity to do that this evening. It might be more efficient if we can go through the whole document, get through these items and then come back and take questions on them afterwards.

Chairman Lopez stated I can tell you that we have had this discussion and I have to agree with Alderman Gatsas and as I said to staff it would be a lot easier as we did the first amendment to the Master Lease and we were able to follow it line by line. One of the items in the last agreement was the forfeit of 8.4 and it spelled out everything and I think that is where the Alderman is going and I have the same concerns. For the sake and depending on what the Committee wants to do later I think we ought to go through the document at this stage of the game since all three principals signed off on it late this afternoon and we have the meeting here and after we hear from Bond Counsel on the rest of the document and other questions that may come up then we can proceed.

Mr. McCabe stated just to recap briefly, the first three paragraphs talk about timing. It is still within the window, which would be the closing date under the purchase under the Master Lease. The three separate deeds are three separate deeds versus one deed. That is the difference from the Master Lease. The seller financing is not contemplated under the Master Lease.

Alderman DeVries asked are you moving right on to Item 4 because I do have questions on the bottom of paragraph 3 that we never made it to.

Mr. McCabe answered sure I would be happy to address the question. I was sort of recapping what I had covered to try and help the Committee understand what is different here compared to what is in the Master Lease.

Alderman DeVries stated my question is more of a legal one for either yourself or Tom Clark. I understand that the 70% will be paid by November 1. It is not likely that any condominiums will be constructed or sold by that period of time but the 30% there is a one year timeframe and there is also something in here to support that if a completed townhouse is to be sold it will be released from the mortgage amount or the principal so that the deed would be clean basically and the unit could be sold. I guess legally my question is if it was still outstanding, if for some reason there is a default on the final one year 30% payment and all of the units

have been sold, what recourse would be left for the City with a second note at that point in time because it will be subordinate to a first mortgage on the property. It says that in the paragraph before. Once it becomes 30% it can become a subordinate if my terms are correct.

Mr. McCabe responded let me see if I can break that apart because I think there are actually two pieces to that. First, yes once the 70% amount is paid, which is reasonably quickly, by November 1, then the developer would be entitled to subject the property to a condominium regime which would allow him to effectively put in place a declaration for the condominium and at that point units would be created with an undivided interest in the common area of the condominium. We would have a mortgage on all of those units and all of that common area but subject to a condominium being in place and he would be allowed to sell off individual units. Whatever units he didn't sell off would remain subject to the City's mortgage. That is the answer to the first question. Now he is not entitled to sell off all of the property without paying off your mortgage. I don't recall whether that is drafted in here but that was discussed and there will be a provision at the end of the day that he can't sell it to someone else leaving you with a mortgage on property that there is no interest in that you can do anything about.

Alderman DeVries replied I guess that is my question exactly. If it is broken into condominium units and the land is divided up in an equal fashion what is going to be left?

Mr. McCabe stated the way they are contemplating proceeding with the development scheme is sort of in three pieces and one piece is actually more somewhat subdivided. Two tower units, which would probably be the second or third phase of the development and one set of townhouse development, which would likely be a number of buildings of varying sizes and two to six units attached is what has been discussed. The idea here is to allow for enhancing the cash flow here by allowing him to get some of them built sooner rather than later which builds the tax base and helps to pay the City's debt service and also allows him to put some in the market and put a little less money in the project and, therefore, he has more money that can be put to things such as the roadway costs and the make whole because of the delay and the taxes not yet being there, etc. That was something that was negotiated and allowed. In terms of the subordination, it is also expected at the time that he is taking out your 70% that he is going to want to put financing in place. A bank would be expected to take the first position on this if it is going to take the senior role in financing and it would likely be not only to take out the land costs but to provide some of the money to build the condominiums. That is what the concept is there. It is unlikely that it

will be sold out within a year – all three development phases. Certainly they may make pretty good headway on some of the condominiums if things are successful.

Alderman Porter asked Mr. McCabe would the language in here be to prevent if a condominium were built and sold this would then eliminate the new owner from having any obligation under this.

Mr. McCabe answered that is correct. They won't be able to buy it if it is subject to a second mortgage in favor of the City so it is to allow it to be free and clear.

Alderman Porter asked so the 30% balance would then go to the remaining units still owned by Mr. Chinburg.

Mr. McCabe answered yes. If you envision it this way you have a mortgage on the entirety and you then break it up into pieces but you have a mortgage on all of the pieces. You then sell off one of the pieces and you take your mortgage off of that and it remains on the other pieces. Actually if you look at the final sentence in that section that is the protection that I mentioned, which is that they can't sell it all out leaving your mortgage on nothing. Paragraph 4 was an item that was discussed between the parties in terms of whether it was appropriate for the deal. The City's position is that we wanted a confirmation that the language in the Master Lease with regard to the fact that this was an "as is" "where is" deal and that the City was not liable for the condition of the property remain in effect with regard not only to the original developer, Manchester Downtown Visions, which it would be as a result of the lease but also with respect to the other two developers who would now be taking directly from the City pursuant to a deed from the City. So this is in there to protect the City and to make sure that provision continues in effect so that the City is protected and it is an "as is" deal between each of the three parties and that it would be providing a deed and conveying the property. With respect to the stormwater and sewer, the Master Lease provided for a reservation with regard to the existing stormwater and sewer system that is out there. This is confirming that that will be included within the conveyance documents. Both that and the "as is" release provisions are directly lifted from what is in the Master Lease. There are no changes. In terms of the letters of credit, the letters of credit that are presently posted are posted really from two groups. There is a letter of credit posted by the stadium developer. We are not talking about that letter of credit here with regard to this position. The letters of credit that are discussed here are in an aggregate of \$2.5 million that were posted by the land development side with respect to the project. Under the Master Lease those letters of credit extend security not only with respect to the development of the parcels for the land development but also to provide extra security for development of the stadium. What is proposed here is that the letters of credit...really two things. One is the letters of credit would support the

development of the real estate development, not the stadium and they would be allocated to the development with respect to parcels since there are three parties developing them. There is a little more detail below in terms of exactly what they support in Paragraph 10. Let me continue and I am sure there will be some questions about that because it is a little bit complicated.

Alderman Gatsas asked can you be a little bit more specific on what this paragraph says because what you just said obviously is changing the \$2.5 million allocations. Are you saying that the allocations are going to be proportionately exchanged for the amounts that are in the purchase prices on the first page? We have a purchase price of \$1.4 million.

Mr. McCabe responded there is a discussion below in Paragraph 10 when we get there about how the letters of credit would be allocated to each parcel and it is an attempt to base it off of, for purposes of understanding how it got there, the original concept of a \$40 million assessed valuation, which is the assessed valuation derived from which with tax revenue you would support the debt service obligation. That was the original sort of financial analysis done with regard to what was needed to carry the portion of the debt service for the stadium that wasn't being paid by the stadium developer and baseball operator. If it makes sense we could wait until we get to 10 and I could walk you through that.

Chairman Lopez stated why don't we just jump down to 10 now.

Mr. McCabe stated what is proposed is that each of the letters of credit - \$1.6 million has been put up by Chinburg and an amount of \$550,000 has been put up by Manchester Downtown Visions and at present \$350,000 by Roedel Partners would be allocated in the following manner. The \$1.6 million would secure effectively 75% of the debt service obligation shortfall that isn't being paid by the baseball stadium operator. The other 25% is allocated with 20% to the hotel parcel and 5% to the retail parcel. I believe the allocation is the \$350,000 letter of credit by the Roedels plus \$370,000 of the letter of credit by Manchester Downtown Visions would be allocated to the hotel parcel. That breaks down to the 20% ratio and the balance of \$180,000 would be allocated to the retail parcel.

Alderman Gatsas stated the last I remember we only had two letters of guarantee - \$1.6 and \$9 million.

Mr. McCabe responded there was a \$900,000 letter of credit originally...

Alderman Gatsas interjected right \$900,000.

Mr. McCabe stated that was originally put up by the Roedels and subsequently Manchester Downtown Visions substituted for a portion of that and the Roedel letter of credit was reduced to \$350,000.

Alderman Gatsas asked can you tell me what Committee approved that exchange.

Mr. Clougherty answered when you agreed to accept the letters of credit it didn't require the Committees to approve it. It is something that can be done as long as the bottom line does not change. I would defer to the Solicitor.

Solicitor Clark stated the agreement required a total aggregate letter of credit whether it be from one party or two parties or three parties. It doesn't require who puts the letter of credit up.

Mr. Clougherty stated it does specify, however, certain conditions on the letters of credit against the banks and the format.

Alderman Gatsas asked so what you are saying is that you could have allocated or somebody could have come forward with a letter of credit of \$2.5 million.

Mr. Clougherty answered as long as it was drawn on a proper bank and it was consistent with the agreement.

Alderman Gatsas asked did you send us copies of the letters of credit. Did this Committee ever see copies of the letters of credit in exchange?

Mr. Clougherty answered you saw copies of the original letters of credit. I don't know as you ever asked for or ever received those copies of the substitutes. I do believe we sent a letter around to everyone.

Chairman Lopez stated you sent a letter to the Committee in reference to the change to the letters of credit but we did not get a copy of the original letters of credit.

Mr. Clougherty stated I would be perfectly happy to provide you with a copy of the substitute. It is a perfectly good letter of credit.

Alderman Gatsas asked doesn't the Master Lease state that there are two letters of credit and who they are defined by.

Mr. McCabe responded the agreement says that the security under the Master Lease will be put up in the form of cash or a letter of credit. It doesn't specify that it must be only one letter of credit. It does specify the terms and conditions of the

letter of credit in terms of proper form and what kind of bank would be sufficient, etc.

Alderman Gatsas asked so the two letters of credit that you and I had a conversation about implicit and explicit weren't they exhibits of that Master Lease Agreement.

Mr. McCabe answered no they weren't exhibits. They were delivered after the Master Lease Agreement was entered into in accordance with what the Master Lease required. It was a later delivery condition.

Mr. Clougherty stated again I think that is one of the administrative responsibilities of the staff and that is what has been exercised.

Alderman Gatsas asked can you tell me what those numbers are. You gave us numbers of \$1.6 million, 550,000 and \$350,000 and then you gave us percentages down below. How do they effect the lines of credit that we currently have and are they reduced?

Mr. McCabe answered the letters of credit in total are not reduced.

Alderman Gatsas asked and what is the allocation.

Mr. McCabe answered the allocation is that the \$1.6 million letter of credit, which is presently posted by Chinburg would remain to secure the development activity with respect to the residential parcel, which would under this proposed arrangement pick up the obligation for 75% of the debt service obligation that is not picked up by the baseball developer. I can walk you through the numbers a little more but let me give you the allocations. With respect to the hotel and residential parcel, that leaves 25% of the debt service obligation. The letters of credit there in total are \$900,000. If you noticed that is not an exact ratio, that is the way the letters of credit were originally put up by the developers. They have requested that we leave that security package in place but allocate it with respect to the developments. It is roughly comparable but not exactly comparable in a ratio of the assessed valuation, if you will, on the debt service that is being covered to the amount of the letter of credit.

Chairman Lopez asked in reference to the \$2.5 million letter of credit, if something develops and they use portions of these letters of credit how long...let's say you use \$500,000 from a letter of credit do they have to put that \$500,000 back in there and for what period of time.

Mr. McCabe answered I hadn't gotten to that detail but no, it is not contemplated that there would be a replenishment.

Chairman Lopez asked could you say that again.

Mr. McCabe answered it is not contemplated that there would be a replenishment. Randy, I know that at one point you had some numbers in your head in terms of how this allocated...my recollection was that it was effectively three years worth...the letters of credit in total between the stadium developer and the money put up by the land developers was equal to three years of total debt service but I don't know how it breaks down on the land versus the stadium if you just broke out the land letters of credit in terms of coverage of the debt service obligation.

Randy Sherman, Deputy Finance Director, replied it was generally based on estimated debt service. At the time we received the letters of credit we obviously hadn't issued the bonds yet. We were trying to get three years worth of tax payments to cover the debt service and actually at the end of the day based on the way the debt was actually structured when we sold it last November we actually are closer to four years worth of coverage from those letters of credit.

Alderman Gatsas asked didn't you say Randy...I remember you very clearly stating that if there was no development that was done and there were taxes due that we would draw them down on the letters of credit and they would have to be reestablished in those letters of credit.

Mr. Sherman answered under the Master Lease that is correct.

Alderman Gatsas stated so again you have negotiated a change or are attempting to negotiate a change and that is one of these.

Mr. McCabe responded that is a change here from the Master Lease, correct.

Alderman Gatsas asked so if we draw down on the letters of credit in April because the portion that you assumed was going to be there for the taxes isn't then there is no replenishment.

Mr. McCabe answered there is no replenishment. That is correct.

Alderman Gatsas stated so that is again an advantage for the developer and a minus for the City.

Mr. Sherman responded well even if there is no replenishment and no development, the letters of credit that you do have would cover you for four years.

You have actually picked up an additional year of coverage. Now if there is some development then obviously those letters of credit would extend for a longer period of time.

Alderman Gatsas replied right but those letters of credit when we were going to draw down even though we have gone from three to four there was going to be a replenishment.

Mr. Sherman responded yes they were replenishable before. That is correct.

Alderman Gatsas stated so that is an advantage the developer picks up and a disadvantage for the City.

Mr. Clougherty stated again I don't see it as a disadvantage, Alderman, and let me explain why. When the concept of letters of credit and all of these were put in place it was really during the MOU stage and very early on in the process as I recollect. At that point in time the City was contemplating a lease arrangement and they did want to have an approach where you had an evergreen, so to speak, with your letters of credit. We are in a position today where you know who your two business partners are. They are a very reputable contractor to do residential development and you have a very reputable hotel. We are at the point where they have invested and are moving forward. The concept of the letters of credit were what if it doesn't move forward, what if it fails, we have issued the bonds and there is some type of a lapse in between there. We have transgressed from that uncertainty to a point where they have been doing significant work in terms of environmental and they have made a significant investment in terms of design and they have made significant investments in terms of dealing with the team and trying to come forward with this arrangement. The likelihood of the project not going forward, I think, is at a much different stage and less risky and a less uncertain venture than certainly was envisioned as part of the drafting of the documents back in the MOU stage. At that point and given that, Alderman, in trying to move forward I think the biggest risk the City has isn't that you have an evergreen letter of credit, it is if you don't go forward and try to move the project along so that you can achieve the end result of having people down along the river and you can achieve the end result of getting the project developed and generating the tax dollars.

Alderman Gatsas replied with all due respect though, Kevin, for six or seven months it was drummed into our heads that we had an agreement and we had to stand behind the agreement and we had to go forward based on the agreement and now all of the sudden because every time the City or people on this Board wanted to make a change we heard we have an agreement and we have to stick by the agreement...this is what the agreement says and this is what we must do now all

of the sudden in the 11th hour when the deal is ready to come to fruition we want to alter the agreement.

Mr. Clougherty responded again, Alderman, I don't think that is the right characterization.

Alderman Gatsas asked well then give me a straight answer. If this doesn't get voted up tonight do we still have a deal?

Mr. Clougherty answered you have the Master Lease and you can exercise the Master Lease and if they choose to go forward they can or if they want to go to litigation then you do.

Alderman Gatsas asked litigation on what.

Mr. Clougherty answered if they feel they don't like the deal that is put forward or if they feel there are some issues they can fall on that. They have rights that they can exercise on the lease and we have our rights on our side. All I am saying to you, Alderman, is to say that this is something that has been done last minute I don't think is exactly true. We have said certainly we have a lease and we will stick to that lease. The City does stick to its agreements. What we have also said along the way is that there are discussions going on with developers and they would like to take a different tact in terms of developing this project on a deed basis rather than a lease basis and that is going to involve some changes and at that time we would come forward to the Board with some changes. That is what we are doing this evening and we are going to lay those changes out there.

Mr. McCabe stated Paragraph 7 is Use Restrictions. There were certain use restrictions within the Master Lease. Those use restrictions would be modified somewhat here. This is partly in relation to discussion that they are buying rather than leasing and part of the discussion between the parties as to whether the City could encumber the property in such a way as to encumber it in things that might not be ultimately marketable and whether that was what the Master Lease intended. There has been a disagreement on that subject in some of these features between the parties but in an attempt to reach a compromise there have been suggestions of some limitation for a limited period of time on use to make sure that they are heading forward in the direction they intend to. A main concern of developers in the current marketplace and it is not just these developers but I have heard it from others is I need flexibility because I never know, and this is what they say, when the next 9/11 incident happens and the money flow shuts off no one wants a hotel, no one wants residential, I have to do something else, I don't want to move forward so that is a grave concern with people in the development market and they requested, given that they were buying the property versus leasing

it that we reconsider and limit the use restrictions. The limitation is what is proposed here in Item 7.

Alderman DeVries stated certainly to me the prior conversation that we had in reference to replenishing our letters of credit is tied very closely to this because when I look at...when we look at the development today we are reassured that we have in place two very good parcels that have already received their Planning Board approvals. We anticipate that they would be going forward but now we see before us that there is going to be no use restriction on the hotel parcel and use restrictions that would disappear in two years on the rest of the parcels. The hotel concerning me most. We are not going to be replenishing a letter of credit and we also are not holding them to go forward with any Planning Board activity that has already been approved. Are they telling us that they wish to reconsider what they are going to do thus possibly affecting the taxes that would be paid and everything that this entire deal has been predicated on? It seems that we should have replenishment of our letters of credit tied to that flexibility releasing the use restriction.

Mr. McCabe responded let me speak because I was there when the hotel developer spoke about this point. Of all of the development activity, hotels are the one that really got hurt by the terrorist situation. I am now representing someone buying a hotel chain that a Spanish company bought a month before 9/11. They are probably going to lose...they bought it for \$80 million and they are going to lose over half of their money because they just bought it at the wrong time and they overpaid and the market dropped. Anyone who is in the hotel business wants the option if they are putting money down to maybe do something else and not start with developing a hotel. That is not letting them off the hook for the fact that if they do not make the tax revenues in this proposal there is a make whole to make sure that you are getting to the same level you expected to be. Not only that but I have seen where the Roedels are and we understand they have been meeting continuously with the Building Department and they are fairly close to being ready to pull a building permit and actually start in the ground construction this fall. I don't know if there is anyone here from those departments in the City but certainly they have been making every indication that they are ready to go. On the other hand they are saying you know if the day after we buy this God forbid there should be an incident we don't want to be restricted to a hotel. That just makes no sense. That is the message they delivered at this point.

Alderman DeVries stated certainly when we talk about the project that we will be addressing later tonight you have been saying that is has been essential for us to have some control over the property so that we do not get something such as low income housing that will become a tax burden. Here we have control of the parcel and in this fall swoop we are relinquishing that control. It just seems that unless

there...we are giving everything away. Who on staff would like to make me understand better why this is important. I understand that the market is difficult for the hotels and it may go before...but they could replace it with affordable housing. There are no restrictions there.

Mr. McCabe stated the original restrictions if we go back to the MOU picture was an attempt to get the developer to stand behind some development that the City could believe would be real and understood how they would allocate it and how they would come up with the dollars to support your willingness to go forward on the bonding for the stadium. That was the original concept. Now they have come in and they have some definitive concepts in mind. They are purchasing the property, not leasing it and they are looking for some more flexibility. This was the last issue yesterday that we went through the Roedels and they were adamant on this point in terms of flexibility. It struck us given where they were, the financial incentives of the fact that if they don't build something there is a make whole there and a letter of credit that is still available that there was every incentive for them to go forward and if they switch tracks they are not going forward as fast and they are going to lose money for not going forward with what they had planned.

Alderman Gatsas asked Walter what would you say in your professional opinion that use restriction release is worth.

Mr. McCabe answered to the extent that the lease is still in place it means what it says and you would be entitled to enforce it and prevent them from another use.

Alderman Gatsas asked what is it worth dollar wise.

Mr. McCabe answered it is only worth dollar wise to the extent that there would be some financial detriment to the City if something other than that use happened. Otherwise it doesn't have a dollar impact. It may have a we don't want low income housing impact here and we were seeking to prevent that.

Alderman Gatsas responded let's try it again because you are dancing around my question. You know where I am going with this.

Mr. McCabe replied no I don't, Alderman.

Alderman Gatsas stated if we release the use restriction what does that add to the value of the property if they wanted to sell it.

Mr. McCabe replied I am not sure whether it does or not. I didn't have involvement directly in the appraisal process that reached the valuation. I am not

sure how much the use was factored into it or restriction on use. Certainly a restriction on use ought to narrow the value if that is not the highest and best use. On the other hand if it is the highest and best use it has absolutely no impact on the value. I know for the hotel site it has always been what I think people thought was the right thing for that location unless the market changes, which it sometimes does.

Alderman Gatsas stated but I think your valid point was and you have to remember that the appraisal was asked to be done effective with the zoning in place as of September 30 if my memory serves me correctly. So the use restriction as of September 30 is much greater than what it is today or much less than it what it is today.

Mr. McCabe stated I believe the zoning has changed allowing for more activity at the site than would otherwise be the case at that time but that is a result of the zoning process, not anything else and I presume those issues were raised at the time the zoning process was going on.

Alderman Gatsas replied if the restrictions are withdrawn with a sales price of \$1.4 million, if those restrictions are lifted then selling the property for more than \$1.4 million without restrictions this doesn't restrict them from doing that. If tomorrow they found a buyer for \$3 million they could sell it for \$3 million without any restrictions.

Mr. McCabe responded if that scenario were to happen, yes that would be true with respect to the hotel parcel. That is correct.

Alderman Gatsas stated so obviously it adds value.

Mr. McCabe responded I don't know that I agree with your assumptions that they could find someone tomorrow for \$3 million versus the price that they are paying for it given the condition of the property. There are significant environmental...

Alderman Gatsas interjected be careful what you say because there is a buyer sitting before you here tonight that is looking at a parcel that is probably a little less desirable and they are paying \$3 million for it so be careful what you are saying.

Alderman Smith stated I would just like to follow up on that. If there are no restrictions on the hotel and like the Alderman said he can sell the land for \$2 million and we have no recourse whatsoever. Is that correct?

Mr. McCabe replied with respect to the sale you would not have a use restriction, which means I guess that you would not have a use restriction. In order for something to be built there it would still have to go through the normal process of what would be permitted to be built there and the letter of credit would continue to be in place to secure some level of development to produce real estate tax revenues or make-up amount in order to cover the debt service obligation allocated to that parcel.

Chairman Lopez asked could I have Steve Hamilton come to the microphone please to maybe shed some light on this. I guess the question is would it be more valuable without a hotel.

Stephan Hamilton, Assessor, stated certainly I can't answer what the value difference might be with or without the use restriction after just hearing about it tonight. My understanding of both of the appraisals that were completed was that they had the highest and best use consistent with the contemplated use of developing a hotel if that helps.

Alderman Smith stated just to follow-up I have been on this and we probably all have for about a year and a half and I can't see...I can see going along but this is one thing I won't agree with, the no restrictions. I cannot see that whatsoever. I can see the other aspects that you have discussed but no restrictions puts us with no leverage whatsoever as far as I am concerned.

Alderman DeVries stated I was hoping that Chinburg Developers would be willing to help us out because I have to wonder if between the parties they have some sort of a sub-lease or an agreement in place so that at least when we look at it being maybe low income housing that that is not going to happen because certainly that would undermine his development at the same time. I don't know if any of the non-staff parties here are willing to put our minds at rest that they are not looking at or any safe guards that might be in place to prevent certain other types of use that we wouldn't particularly want to see. Low income housing as we heard was potentially going to take place on the Jac Pac property so you have to wonder if somehow somebody would want to do that there instead of a hotel. It is only a \$276,000 land purchase.

Chairman Lopez stated I think that if Mr. Chinburg wants to come up I will allow it but he is going to have to be available for other questions if he is sticking by the lease that he has signed and if he wants to change it that is another story. I will proceed and let him make that decision since he made an agreement with staff.

Eric Chinburg stated you do understand that my site does have a use restriction that requires market rate. I do know that the Roedels have invested in all of the architectural and they are ready to build their hotel. I also know that in all of the appraisals that were done during the arbitration process it was always determined that a hotel was the highest and best use for that site so by removing the use restriction it would have no value difference on the parcel because it is always contemplated that the highest value for that site is hotel and that is what the appraisal put the value at. As far as your question regarding do I have any assurances from Roedel, no I don't but it is just simply based on the fact that it is highest and best use as determined by every expert that was involved in this project it is pretty difficult to contemplate that someone else would do something different with it that would not be detrimental. Of course, there is the letter of credit in place also.

Alderman Gatsas asked Mr. Chinburg do you have that agreement yet with Manchester Downtown Visions.

Mr. Chinburg responded which agreement is that.

Alderman Gatsas stated the execution agreement that I have been looking for for the last six months.

Mr. Chinburg replied I have different agreements with them that are between them and me.

Alderman Gatsas asked do you have an agreement that gives you the position of control of your site.

Mr. Chinburg answered I have an agreement that gives me control of the site.

Alderman Gatsas asked would you make that available to this Committee because my understanding is through staff that there are not supposed to be any exchanges of control of that site unless we approve it.

Mr. Chinburg answered it is a contingent agreement that if they gain site control they will agree to transfer site control to me.

Alderman Gatsas asked can somebody give me that answer.

Mr. McCabe answered there is nothing preventing a contingent deal on the Master Lease.

Mr. Clougherty stated especially contemplating going to a deed type of arrangement.

Alderman Gatsas asked can you show me where it says that because we have asked that question and...

Mr. McCabe interjected no I can't show you where it shows a negative.

Alderman Gatsas asked can you show me the positive.

Mr. McCabe answered the positive is that they are not allowed to enter into a sub-lease without City approval. They have entered into a contingent deal. That is not a sub-lease. That is an agreement that says when and if something happens...

Alderman Gatsas interjected so you don't have a sub-lease Mr. Chinburg.

Mr. Chinburg responded no.

Mr. McCabe stated Item 8 and Item 9 are features that were in the Master Lease. Item 8 was a reversion right in the event that \$40 million of assessed value did not get constructed under the Master Lease on the site. We had fairly lengthy discussions with the developers. They pointed out the obvious market issue, which is that you cannot sell property that has a reverter on it and absent a highly unusual situation you certainly can't sell it to an end user buyer of a condominium and say it doesn't matter what you do if something else happens somewhere else you could lose your condominium unit. A purchase and a reversion in this case did not appear to be something that would make sense together. We disagreed about whether or not there was a right under the Master Lease to insist on that after purchase but we all said that doesn't make any sense if it doesn't allow development to proceed and the discussion was on ways to move the development forward and this provision, therefore, wouldn't apply that we sell them the property, get a purchase price and get a right to take the property back at some point in the future.

Alderman Gatsas asked Mr. McCabe how can you as our attorney that we are paying dearly for, when we negotiated the original lease that you told us that is a position that we should take.

Mr. McCabe answered in connection with the lease that is correct. This is not a lease transaction as it is proposed. It is to purchase the property for which the City is receiving what arbiters have decided is a fair value.

Alderman Gatsas asked well why didn't you ever give us that explanation when we were entering into it because there was a clause in there that said they could purchase it. Why wouldn't you have ever given us that legal advice back then?

Mr. McCabe asked what legal advice is that. I am not sure what legal advice you are looking for.

Alderman Gatsas answered the legal advice that that could have changed if they entered into a purchase.

Mr. McCabe stated I am not sure I understand.

Alderman Gatsas responded the reverter clause. You said that the reverter clause is in there for the lease.

Mr. McCabe replied that is correct.

Alderman Gatsas stated and as our legal counsel there was a clause in the lease agreement that allowed them to purchase. Why didn't you give us legal advice as our legal counsel that that could have changed if they went to a purchase and the reverter would be eliminated?

Mr. McCabe responded it didn't need to be eliminated in connection with the lease. It was a perfectly appropriate provision in connection with the lease. In connection with a purchase there was a dispute as to whether the City was still entitled to that right between the parties. Even if the position was correct legally that you are entitled to the right, it didn't make any sense if it defeated the development. It was the City's intention to allow the development to proceed here, to build the tax base and pay the revenues for the debt service. I am trying through this process and working with City staff to look not only at the particulars of exactly what the documents say but what serves the end of what the City's intention was in the Master Lease especially where there were disputes between the parties in the discussions about exactly how certain provisions would work. For purposes of that dialogue it didn't help the situation to just talk about that rather than to say what is the solution that protects the City while at the same time allowing the deal to move forward.

Alderman Gatsas replied but Mr. McCabe that was a vital piece that said if they didn't reach the \$40 million development the City was protected. That, I believe, was a cog in this whole deal that said if they don't meet that requirement it reverts back to the City where the City was protected. Now nowhere during the dissertation was it ever said you know if they do come in and purchase the reverter is going to have to go away to make it easier for them to purchase. That was never

said to us and I believe that you represent us and you never told us that. This is the first time I heard that this evening.

Mr. McCabe responded to be honest with you I don't recall. That was some time ago. We have had many, many discussions and numerous questions asked of me on various subjects and various people among the City have discussed at different times the features of the agreement. To be honest with you I can't recall exactly what the discussion was with regard to the reverter.

Alderman Gatsas stated well thank God the City records it all and I am sure if we want to look back that was a big point in the lease that there was a reverter clause.

Chairman Lopez stated let me just remind you Walter as we look at the Master Lease I have to go back to that as I mentioned to you before. We understand the Master Lease and we understand what has been negotiated here, which changes the whole prospect of the Master Lease to that degree and when we voted for the Master Lease we were voting on something that we saw and understood to that degree. Now we are in the development stage and everything is changing. Keep that in mind as you continue here to explain some of these paragraphs. We said in the beginning that it would be much easier to associate it with the Master Lease and apparently we are not. Go ahead and proceed.

Alderman Guinta asked can somebody explain how the reverter impacts the requirement of the \$40 million assessment.

Mr. McCabe answered the original concept was under the lease if \$40 million of assessed value wasn't built and, therefore, there was a shortfall in the debt service because the real estate tax revenues were insufficient that it would give a right to the City to terminate the lease and take back the property. That is under a lease arrangement. That is what the lease provided.

Alderman Guinta asked so removing the reverter...

Mr. McCabe interjected in connection with the purchase there was a discussion about did the reverter apply. That was the discussion between the parties. It was conceded that it would be difficult in that format for a purchaser to purchase it and pay good money for it and still have the property subject to surrender.

Alderman Guinta asked are you essentially saying that we are removing any safeguard to meet the \$40 million assessment now.

Mr. McCabe answered not any safeguard, that particular safeguard.

Alderman Guinta asked what other safeguards are in place to meet the \$40 million assessment.

Mr. McCabe answered the other safeguards relate to the letters of credit that would continue to be posted. We discussed it a little bit under Paragraph 6 and there is more discussion under Paragraph 10 in terms of how that functions to cover the debt service obligations that are expected in connection with the property.

Alderman Guinta asked is there a requirement to continue to meet the \$40 million.

Mr. McCabe answered the requirement would be adjusted to be allocated to the respective parcels. You would still have the fact that if they hit 60% completion, which was always a concept in the document, the Master Lease, that the letters of credit would be released now against the parcels and the letters of credit would be the security for the debt service obligation. If they never got there beyond that, what is contemplated here is no, there would not be an additional stick or leverage for the City if...let's suppose the hotel parcel ultimately gets completed and turns out instead of \$8 million it is \$7.9 million of assessed value and that is what it is paying taxes on and that is not quite the \$8 million that is where it would get to.

Alderman Gatsas stated when you go in and take a look at the release of the letters of credit if it is \$7.9 million chances are those lines of credit have been released.

Mr. McCabe responded at the time that it is 60% complete, they are entitled to release letters of credit. That is the same provision that was in the Master Lease. That has not changed the concept.

Alderman Gatsas stated but the reverter clause goes. That was our protection until the 100% completion was done.

Mr. McCabe replied that was one of the protections.

Alderman Gatsas responded that was the only one that was left. Can you show me another one in the Master Lease that protected us because at 60% the letters of credit were gone on either whether it was a lease or a purchase?

Mr. McCabe stated that reverter right did protect the City with respect to the lease. It allowed you to terminate the lease.

Alderman Gatsas asked so you are not as legal counsel telling us that we should give that up.

Mr. McCabe answered I am telling you that if you are proceeding with a sale of the property you no longer have a lease and a person who is paying a sales price for a property would be, under the arbitration it is the way the valuation worked, not subject to the terms of the reverter in the lease and that was part of the dialogue between the parties. If you want to proceed with a deal when the development happens, what has been negotiated with the parties would...

Chairman Lopez interjected a lot of questions have come up on the negotiated agreement, which I am sure you are well aware of.

Alderman Gatsas asked Kevin wouldn't you agree that all of those things...as you said the deal has changed and maybe...I know that the bonding issue and the vote on that bonding issue may have changed if these conditions were in that. I agree with you that we are in an ever evolving situation here but you can't look at one perspective and say we are protecting the City and all of the sudden some year and a half later we are into a different deal and that deal changes and give up the things that we thought we were protecting the City with. I look at that and say maybe if these things were in the original deal they wouldn't have done the original deal. I think it is very pertinent that the things that we really believe that we were protecting the City with, with the reverter, the construction timelines, the LOC's...those were all things we believed protected the City. Now we are looking to change all of those and give them up.

Mr. Clougherty answered I think at the time, Alderman, I agree with you. Under that arrangement given what you knew at that time those were necessary. We are at a point in this development where you have two reputable companies who have stepped forward and agreed to go ahead and do a major significant project for the City that is going to result in significant tax dollars and down the road certainly more than the debt service because as the debt service declines the taxes should go up and I think we are at a point where the developers feel that they have put in significant resources and they would like to see the City move forward on some of these points. It is very difficult for them with reverters. It is very difficult for them with respect to some of these other issues to move forward and market their project. They have made a proposal and the staff supports it and that is what we are bringing forward. If there are to be changes then we are going to have to go back and renegotiate.

Chairman Lopez stated I have had a request from some of the Aldermen to meet with legal counsel. Is that the wishes of the Committee?

Chairman Lopez recessed the meeting to meet with legal counsel.

Chairman Lopez called the meeting back to order.

Mr. McCabe stated Construction Covenants is Item 9. The Master Lease included a provision for construction activity. That is Section 8.3. It had contemplated initially construction by certain dates and completion by certain dates. The construction by certain dates was subsequently removed when those dates were not achieved and the completion dates also became not achievable as this matter has moved forward. Again, the discussion there of construction covenants were if they weren't met then we could terminate the lease. If we didn't have a lease in place and we are now talking about an economic incentive, namely the make whole and their letters of credit, the construction covenants we would have to figure out what the reset dates were and again it would be akin to the reverter, which is we would be putting a sunset against some people who may have bought the units. Again, it was an unworkable provision in the context of a purchase of the property as opposed to construction covenants before it was known and contemplated really when the Master Lease and the MOU were done exactly what was going to happen. It was mean to hem in timeframes in terms of bringing the projects on-line, the timelines of which have been altered by some circumstances subsequent to that.

Alderman Guinta asked were there any penalty clauses associated with the construction covenants.

Mr. McCabe answered yes. Failure to meet them as I said would be default on the lease allowing the City to terminate the lease.

Alderman Guinta asked and those were all removed.

Mr. McCabe answered again those wouldn't apply anymore if there isn't a lease there to apply them against. There is a similar sort of discussion in terms of the rationale of putting that against property that has been bought and paid for as opposed to a lease.

Alderman Guinta stated let me ask you a question. Why would we put these provisions in a document if that document also includes a purchase option? Why would we have put any of those clauses in at all?

Mr. McCabe responded the original concept and this was a document that evolved over time, was that the developers wanted to do a lease deal. At that point it meant that all of the equity, if you will, in the land was the City's. The City wanted to make sure that if that equity wasn't treated well that it could get the land backs, its equity back. That is why all of the restrictions went in the lease. Subsequent to that, there were discussions over time about giving a purchase option should they decide they didn't want to play the game that way anymore so

to speak and to pay the City for the fair value of its equity in the land. What didn't happen at the time the purchase option was added was any intensive dialogue by anyone to be honest with you going through item by item and saying that is in and that is out. There is disagreement...certainly the City thinks that there is a case to be made and we discussed it among ourselves but again we weren't looking at should we litigate this. Rather we were looking at how do we make this particular situation work that these provisions really came out of the concept of the lease where the land was your value as opposed to a value that someone else had bought and paid for. That is sort of the basic reason why that is in there. It was in there because the concept started with a lease and evolved eventually to giving them a purchase option at which point you would have been paid for the value of the land that was part of what you were initially protecting because it was your money in the game rather than somebody else's.

Alderman Guinta stated our money is still in the game.

Mr. McCabe responded your money is in the game in connection with the stadium, yes but your money in connection with the land is going to be paid to you under this purchase proposal.

Alderman Guinta asked, Randy, how many...do you have a comment on this. On removing the construction clauses because I remember that...I think the phrases that you have used most in the last year are either LOC and the other one was probably these additional provisions and some of these safeguards. Are you comfortable with removing some of these?

Mr. Sherman answered yes. Let me just refresh your memory as to what the construction covenants were. The hotel was supposed to be open by March 1, 2005. I think they will probably tell you they are going to miss that by four or five months because of the late start. There was one in there for the power plant, which you know has been gone for quite awhile. The residential development was supposed to commence construction on September 30, 2003, which we know that wasn't going to happen but it was supposed to be marketed for rent or sale by December 31, 2004. I still think they are probably going to meet that one. The fourth one was that the retail would be ready to be marketed for rent by December 31, 2004. So you are not...you may be pushing these back six months...even if they were in there you would be pushing them back six months but clearly these covenants...

Alderman Guinta interjected why wouldn't we just push back and make new deadline dates rather than just removing all of them all together.

Mr. Sherman responded I guess I would go back to Walter and again I am not...the difference between a lease where you do have some control and a sale where you have the cash for it.

Alderman Guinta asked who put the clause in this agreement, the purchase option clause.

Mr. McCabe answered technically I put it in at the direction of City staff because that was negotiated with the Manchester Downtown Vision party.

Alderman Guinta asked and when was that.

Mr. McCabe answered I don't recall exactly but it was towards the end of negotiating the lease. It wasn't in the first draft. The second draft, if I recall...the first draft that it came up in was a purchase right with regard to the residential property on the basis that that would be more difficult to do as a lease deal and subsequently became a purchase option as to all or any portion. I don't remember the exact timeframe but that was later in the discussions between the parties. Paragraph 10 we have touched on somewhat in connection with Paragraph 6. It is the functional provision for the letters of credit. What it seeks to do is to preserve the 60% release, which is the concept in the Master Lease applying it to the respective developments. It is also intended to allocate the letters of credit to the expected developments and it is expected to tie what the City is attempting to cover here if tax revenue is insufficient, namely a very now known and certain debt service obligation that would need to be paid to the respective developments and if not paid to make sure there was the right to draw on the letter of credit to make it up to the extent that the real estate tax revenue wasn't sufficient and the make whole obligation so described in here wasn't paid. There are a number of paragraphs with respect to it but that is the basic overview. With respect to the residential parcel given that we knew what was contemplated was a concept of a time development with probably townhouse units going first with a first and perhaps second tower, the release of that letter of credit was allocated across those three aspects of the project. The valuations, I recall, were roughly 1/3, 1/3, 1/3. I don't remember exactly what the numbers were as that was being derived and negotiated between the parties. The next paragraph, Paragraph 11 relates to the roadway cost. The roadway cost from initial estimates has, as we understand it, escalated dramatically given the conditions out at the site. There has been a lot more environmental clean up needed than what was originally anticipated. That continues potentially to escalate. One of the things we wanted to make sure of in connection with completing this transaction is that that cost is understood and agreed upon between the parties so there was no hiccup with the roadway getting done, which is necessary to get the development completed, which is necessary to get the development completed, which is necessary to get tax revenues to support

the debt. This is an allocation, none of which the City is getting involved in other than with respect to the stadium portion of the financing that was already coming from the stadium developer. That is what Paragraph 11 talks about. That is really the allocation among the various development parties on how they are going to cover that cost and if there is excess even from what is estimated today. Item 12 is the Riverwalk parcel. This, I think, is only a slight variation. I think the original Master Lease said two things – one that they would maintain the Riverwalk with respect to the premises and second that if the City got an easement against the Langer parcel that they would extend the Riverwalk on that parcel. The City didn't get it. They didn't have to. The slight variation here is that it has been broken out to the respective parcel owners here in terms of the responsibility to maintain and it is suggested since the City as I understand it hasn't gotten such an easement and at least it was suggested to me that maybe that wasn't immediately in the cards, that if the developer of the retail parcel, MDV, did do a transaction with the owner of the Langer parcel that they would at that point add the Riverwalk there.

Chairman Lopez stated depending on what the Committee does, this is the only document whether we reject it or approve it and pass it on to the full Board. There are no other documents whatsoever or any other agreements. This is the only document that has been signed and there are no other documents and if there are any documents they must come back to the City.

Mr. Clougherty responded at this point this is the business proposal. You still have the leases and all of those documents that are still in force. If the Board decides to go forward with this business approach with the hotel and the developers then some documents would have to be constructed to put this business plan in place but those documents would have to be drawn within the parameters of this business deal. They would not be able to go out beyond that and staff would not have the ability to change that. If there was a change it would have to come back to the Board. That is why it was important to get signatures on this business parcel. It is our understanding that the way the process usually works is you would authorize the Mayor to execute the deed and all of the ancillary documents with the approval of the Solicitor understanding that it has to be within the confines of the approved business plan that has been presented.

Alderman Gatsas stated if we go back to Item 9, Construction Covenants, obviously those construction covenants were put in for a reason so that the tax base that we were looking for to pay for the project would come forward. I guess, Randy, what would the cost as of April 1 if there wasn't a stick put in the ground what would the cost be on April 1 that would be owed?

Mr. Sherman responded what we are looking for at that point, the difference between the debt service and what the team is paying is \$229,539.18. That is based on a projected tax rate as we are looking at 2005. It is roughly about \$8.5 million of valuation at today's ratio. There is currently a value at least on the land. We don't know what it is and I don't think the Assessors have come up with a number on that yet. That would go against that \$229,539.18 as would any construction that takes place between now and April 1.

Chairman Lopez stated let me follow-up with Steve Hamilton because I called him today and he can give you the value of the land as of April 1, which he has calculated. As he is coming up here, Randy, in 2005 we have a debt service of \$979,539.18 and you are right, \$229,539.18 is from tax revenue and the \$750,000 is from the stadium.

Mr. Hamilton stated we are looking at a taxable value for 2004, which may be different than 2005 because of any construction that would occur of just below \$1.6 million.

Chairman Lopez asked what is it now.

Mr. Hamilton answered right now it is \$1.59 million.

Chairman Lopez asked what is that in taxes.

Mr. Hamilton answered approximately \$42,000.

Alderman Smith stated I would like to see this project move forward but I still have reservations on the use restrictions in regards to the hotel and it really bothers me. I would like to ask you gentlemen from staff or maybe Walter why put it in at all? We need some protection and there is no protection if he is released of his letter of credit after 60%. Who knows what he is going to do with the rest of the building?

Mr. McCabe responded while it is true that you could do something else, I think this was really a point in the negotiations where the other side said I have had enough on that point and I really want it. I think that stuck with the hotel in mid construction just after 9/11 and if they had had sort of...they had there the flexibility to do what they needed and decided to finish it and they did open it but I think in hindsight they are saying they would like the opportunity...that is what they presented as their argument. They want the opportunity to say let's not finish a hotel let's turn it into if that is no longer the highest and best use, apartments or something else. On the other hand, they are planning on going in the ground right way. I think there has been in the development community a little bit more

uncertainty about catastrophic events outside of their control and making sure they are not locked in. I am hearing it in other places. This is not unique to Manchester or this development.

Mr. Clougherty stated they were very clear on that point that their intentions with everything they have been doing and going forward in good faith that they were showing us something they thought should be taken into consideration by the City to move forward with this project and it is their intention to get this project moving fast. The timetable is aggressive mainly because they have asked it to be aggressive so that they can get the hotel in the ground.

Alderman DeVries stated I would like to elaborate on that because I am not as concerned with 60% of the hotel being finished and then never being completed. I think if we go that far we will get a finished project. I am concerned with it not starting and a change of product coming out. I am wondering if they are going to be starting next month. I think I heard that they are about to pull building permits. If they are that close I wonder if they wouldn't allow a clause that would replenish their letters of credit so should something happen and they do not pull their permits next month and they do decide to change to a convention center of something we have something to fall back on to justify that it will be of equal value and will be bringing us the same tax dollars and will pay the debt. If they are going forward, that should be very easy to get from them. I would also see the same condition – a replenishment of the LOC tied to the small retail parcel because if I recollect correctly we were very close on our assessed values and we were actually potentially needing that small retail parcel down by the river to pull some assessed value. There are no permits, no designs, no plans of any sort on that parcel. Nobody really knows what that will become and it would seem that we should tie some sort of a replenishment clause on the letter of credit tied only to the small parcel. That would be my suggestion.

Alderman Gatsas stated I don't know if this is a question but more of a statement. When this project first came forward it was about a development deal that wasn't going to affect the taxpayers of the City of Manchester because we had the protection of the reverter rights and because we have the protection of construction covenants and because we had all of those things in place we were protecting the taxpayer. Now do I understand that staff is now coming forward and saying that all of those should be removed?

Mr. Clougherty responded what you are hearing the staff say is that when that deal was put together we didn't have the information that we have now about the land and we didn't have a handle as we now have with respect to the subdivision. We didn't have the developers themselves well on their way to the investment in what

they have done. So it is a much different circumstance. When we talk about a reverter right under the lease...

Chairman Lopez called for a recess to allow for the special meeting of the Board of Mayor and Aldermen to be called to order.

Chairman Lopez called the meeting back to order.

Chairman Lopez stated before I accept a motion I just want to say on behalf of the Committee and staff and once again we were available to meet within 24 hours after negotiations and as you are well aware we just went through two and a half hours of explanation of a lot of things and asked a lot of questions and the Committee is right in asking a lot of those questions. Understanding that the Master Lease Agreement and what is being presented today is not the same thing in order to get this project either moving in the right direction since the principals are all ready to go with that I will accept a motion from any Committee member.

Alderman Smith stated this has been a very difficult process. Outside of all of the changes that were proposed, I have no problem except the one on the use restrictions. At this time, I would like to refer this Development Agreement to the full Board tonight.

Chairman Lopez asked do you want to refer it to the full Board without a recommendation.

Alderman Smith moved to accept the Purchase Proposal as presented. Alderman Guinta duly seconded the motion. Chairman Lopez requested a roll call. Aldermen Smith and Guinta voted yea. Aldermen Gatsas and DeVries voted nay. Chairman Lopez broke the tie with a yea vote. The motion carried.

There being no further business, on motion of Alderman Smith, duly seconded by Alderman DeVries it was voted to adjourn.

A True Record. Attest.

Clerk of Committee